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MAILED

OCT 29 2010

OFFICE OF PETITIONS

In re Patent No. 5,539,142 : Paper No. 9
Issue Date: July 23, 1996 :
Application No. 08/474,743 : DECISION ON PETITION
Filed: June 07, 1995 :
Attorney Docket No. 001701/0096 :

This is a decision on the petition under 37 CFR 1.378(c), filed August 13, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

The above-identified patent issued on July 23, 1996. Therefore, the period set forth in 35 U.S.C. § 41(b) for paying the eleven and one-half year maintenance fee expired on July 23, 2008.

A petition under 37 CFR 1.378(c) must be filed within twenty-four months after the six month grace period specified in 35 USC 41(b). The six months grace period for the instant patent expired at midnight on July 23, 2008. Accordingly, an unintentional petition to reinstate the instant patent must have been submitted no later than July 23, 2010. Since the petition was not timely filed, the instant patent will not be considered for reinstatement under the unintentional provisions of 37 CFR 1.378(c).

35 U.S.C. § 41(c)(1) authorizes the Commissioner to accept a delayed maintenance fee payment within twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b) if the delay is shown to have been unintentional, and authorizes the Commissioner to accept a delayed maintenance fee payment at any time if the delay is shown to have been unavoidable. Thus, 35 U.S.C. § 41(c)(1) does not authorize the Commissioner to accept a delayed maintenance fee payment later than twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b) unless the delay is shown to have been unavoidable. Since the instant petition was not filed within twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b), the Commissioner cannot accept a delayed maintenance fee payment for the above-identified patent under 37 CFR 1.378(c).

Should petitioner wish to pursue reinstatement of the above-identified patent on the basis of unavoidable delay, petitioner should file a petition under 35 U.S.C. § 41(c) and 37 CFR 1.378(b), which must be accompanied by (1) an adequate, verified showing that the delay was unavoidable, since reasonable care was taken to insure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the

patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).

If petitioner does not wish to pursue reinstatement of this expired patent, petitioner may request a refund of the \$5,750 submitted with the instant petition. The request should be made in writing and addressed to: Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

Petitioner should note that 1.378(d) requires that the petition under 1.378 for delayed payment of maintenance fees must be signed by an attorney or agent registered to practice before the Office, or by the patentee, the assignee, or other party in interest. It is not clear from the record if the petitioner whose signature is on the instant petition is authorized to sign this petition under 1.378(d).

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

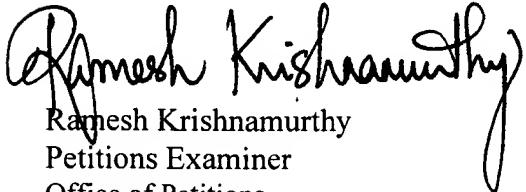
Further correspondence with respect to this matter should be addressed as follows:

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Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to Tredelle Jackson at 571-272-2783.


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